

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Brad Bowman against Rocky Mountain) DOCKET NO. 09-035-17
Power) REPORT AND ORDER
)

ISSUED: June 10, 2009

By The Commission:

This matter is before the Commission on the formal complaint of Brad Bowman against Rocky Mountain Power (Company). On or about March 30, 2009, Mr. Bowman filed a formal complaint against the Company for its refusal to provide electric service for the property at 4609 South 2300 East, Salt lake City, Utah (Property) under his name and for refusing to reimburse him \$7,500 paid towards arrearages on an account.

The Property is a master-metered premise which includes a number of offices. The Company initially commenced service to the Property in 1979 with service established under the name of Probe Construction. Paul Gardner was listed as the president on the Probe Construction account. In August 1998 the account was transferred in the name of Probe Construction d/b/a Networld Connections, Inc. (Networld). When the transfer was performed, the debt was also transferred to the Networld account as the same principals were simply operating under a different name. Ken Bowman, Mr. Bowman's brother, is the president of Networld. The Utah Division of Corporations and Commercial Code listed Mr. Bowman as secretary, treasurer, director until at least June 20, 2006.

Mr. Bowman states that in December 2005, he and his brother, Ken, had a "huge falling out and that effective December 31, 2005 "he was no longer employed *or had any*

association with Networld.” He also stated that Networld’s board resolved that “Brad Bowman is removed from all positions with Networld Connections, Inc.” and that “Brad Bowman and Paul Gardner no longer have authority to represent Networld Connections, Inc. *in any capacity.*” As evidence of this, he attached a copy of a few pages of a Complaint filed in the Third Judicial District Court, and pending before Hon. Joseph Fratto, Jr., Case No. 060906189.

The Company states that since Networld became the account holder, it has “demonstrated a history of making sporadic payments going back to” when it first established service in 1998. The Company’s attachment detailing the account history tends to establish this allegation. It is riddled with a history detailing a number of “Final Notices”, attempts to collect payment, collection of cash payments at the site by Company collectors, etc. On January 26, 2009, the Company issued a bill to Networld bringing its account balance to \$11,361.67. On January 30, 2009, the Company sent a final notice and demand for payment to Networld for \$10,122.38 which was due by February 6, 2009. On February 17, 2009, service to Networld was disconnected. On February 18, 2009, Ken Bowman contacted the Company to determine the amount that had to be paid for reconnection of service. He was quoted the amount of about \$10,122.38, plus an additional amount of \$3,000—which amount represented the amount for a non-residential security deposit pursuant to Rule 9.1(a) of the Company’s tariff.

During a site visit on February 25, 2009, a Company manager determined that unauthorized usage had occurred since the disconnection. The manager learned from Mr. Gardner that Ken Bowman had self-reconnected both the electric and gas utilizes at the site. Mr.

Gardner additionally affirmed that he still owned the building and had not sold it. In accordance with its tariff, the Company assessed a tampering fee on the account.

On February 26, 2009, the Company again disconnected the service, this time at the transformer, due to unauthorized reconnection of service. *That same day*, Mr. Bowman claims he “finalized a deal with Ken Bowman for his part” for sale of the building to Mr. Bowman. He also faxed the Company a quit-claim deed, also allegedly signed by Ken Bowman of Networld Connections, Inc. on February 26, 2009, and which purportedly conveyed the Property to Mr. Bowman. Mr. Bowman called the Company, and faxed a copy of the quit-claim deed to the Company, attempting to reconnect service to the building. He contended that since he now owned the Property, he would commence paying all future electrical bills on the Property, but not any of the past-due amounts.

The Company, however, refused to reconnect service and accept Mr. Bowman’s application for service until the Networld balance was paid. The Company stated the following reasons for refusing to accept Mr. Bowman’s application for service:

1. service at the [Property] was (and still is) being taken by Networld;
2. collection efforts to pursue an arrears balance created by Networld were already underway;
3. Mr. Brad Bowman is associated with Networld and was an authorized person on the Networld service account; and
4. signing Mr. Brad Bowman to a new account would essentially place him in a condition of taking service fraudulently, which would violate Rule 10.1(h) of the Company’s tariffs.

In order to maintain power to the Property, on February 28, 2009 Mr. Bowman offered to pay \$7,500 towards the Networld account (and did pay \$7,500) and promised to pay

the remaining balance in two subsequent payments. He did not, however, pay the two subsequent payments and reversed a \$1,000 and \$400 credit card payment to the Company.

Although Mr. Bowman contends he should not have to pay Networld's account arrearages because he now owns the Property, evidence before the Commission disputes his ownership. The Division of Public Utilities (Division), in its Recommendation for dismissal of the complaint, submitted evidence from the Salt Lake County Assessor's office showing that as of May 22, 2008, the owner-of-record is Transionics, Inc. and F. Jackson Millet, and have been since May 16, 1984. Mr. Bowman himself admits that the sale of the Property has not occurred. In his complaint, he stated that Mr. Gardner was "*making the purchase* very difficult and inflating his pay off in the original contract with Networld that I now own." He further admitted that "all I am *trying* to do is buy the building outright from Paul Gardner/Transionics." In an e-mail of May 7, 2009, Mr. Bowman also stated that the *ongoing lawsuit* involves a dispute about the purchase and sale of the building, specifically, "negotiations with Paul Gardner, Uniform Real Estate Contract between Paul Gardner (of Transionics) dated June 30, 1999 (1999 REPC) and Uniform Real Estate Contract Amendment between Transionics and [Mr. Bowman]" (2009 REPC) (collectively REPCs). The Division also submitted evidence from the Utah Division of Corporations and Commercial Code showing that Mr. Gardner is listed as vice-president, registered agent, and director of Transionics—the Property's apparent owner. Mr. Bowman submitted copies of a quit-claim deed he claims establishes him as the new owner of the Property. Even Mr. Bowman admits, however, that the validity and effect of the deed is in dispute. (He also stated that the quit-claim deed was amended in March 2009 by the 2009 REPC,

while this complaint was pending, and attached a copy of that amended deed.) He said the quit-claim deed had not been recorded because 1) it is still “pending final review and analysis by [his] attorney”; 2) because of negotiations with Mr. Gardner over the purchase of the Property; 3) because there is a lawsuit pending involving Networld, Transionics, himself, Ken Bowman and Mr. Gardner; 4) and because he is waiting to get a decision from the Commission.

In addition to Mr. Bowman’s claim that he owns the Property, he also claims that he has no association with Networld and should not have to pay any amounts owed by it. That allegation is also in dispute. On February 11, 2009, Ken Bowman called the Company and added his brother, Mr. Bowman, as an authorized account contact for Networld. This, despite Mr. Bowman’s contention that Mr. Bowman “no longer ha[s] authority to represent Networld Connections, Inc. *in any capacity*”, and almost four years after Mr. Bowman and his brother had a “huge falling out.”

The Company noted that Networld and Transionics are still tenants in the Property, and that they would still remain tenants if Mr. Bowman were permitted to commence a new account. In that case, none of the parties would have to pay for service received, despite an arrearage on Networld’s account for service rendered. Mr. Bowman does not dispute that both Networld and Transionics will remain tenants in the Property and continue to receive service. He also does not dispute that they owe amounts for service received by the Company.

Mr. Bowman has demanded full reimbursement of the \$7,500 payment, demanded the Company accept his applications for service and commence new service, and refuses to pay any of the arrearages owing on the Networld account.

The Company filed its response on April 28, 2009. It cited many of the facts stated above and requested that the Commission dismiss Mr. Bowman's complaint. It stated its reasons, cited above, for why it denied service to Mr. Bowman. It also stated that given Networld's history, and the evidence and statements submitted by Mr. Bowman, that Mr. Bowman, his brother Ken Bowman, and Mr. Gardner appeared to be collaborating to avoid paying for service. It stated that its actions violated no Utah law, Commission rule or order, or Company tariff and that Mr. Bowman's complaint should be dismissed.

The Division also submitted evidence, cited above, that refuted some of Mr. Bowman's claims regarding ownership of the Property. It also submitted evidence that it claims shows that Mr. Bowman, Ken Bowman, and possibly Mr. Gardner all have some affiliation with Networld and may be collaborating to avoid payment of Networld's arrearages. It recommends dismissal of the complaint.

ANALYSIS

The Commission finds that the Company has not violated any Utah statute, Commission rule or order, or Company tariff. The Company is justified in refusing Mr. Bowman's application for new service.

Mr. Bowman's evidence does not establish that he is owner of the Property and that he has any right to establish new service for the Property in his name alone. Although he claims he owns the Property, his own evidence shows that he has yet to purchase the Property outright from the apparent owner, Transionics/Mr. Gardner. He admitted that he is "trying to" buy the building outright from Mr. Gardner, complaining that he is "making the purchase very

difficult,” but admits the purchase is not complete. Additionally, the quit-claim deeds he submitted are of questionable reliability in establishing his claim to the Property. First, it appears that the quit-claim deeds and the related REPCs are at the center of a three-year civil dispute between Networld, Mr. Gardner, Mr. Bowman, and Transionics. A survey of the court docket in that case reveals that the case is still ongoing. Whatever dispute the parties have regarding the Property, the Commission will not undermine the civil court’s jurisdiction by attempting to adjudicate what effect or validity the REPCs and deeds have on the parties’ rights. Second, from the evidence submitted by the Division, it appears the Property owner is Transionics, not Mr. Bowman. Neither Networld nor Ken Bowman are listed as a shareholders, officers, etc. of Transionics, and seemingly have no right to the Property. It is not clear, then, why Ken Bowman would be conveying Property in which he *apparently* has no right, to Mr. Bowman. Third, the dates the quit-claim and amended deeds were executed seem remarkably coincidental, and that—together with the forms of the deeds and REPC, brings them into question. The first deed is signed on the *very day* Networld’s account is terminated, i.e. February 26, 2009, the same day Mr. Bowman says he and his brother “finalized a deal” for sale of the building. After being told that he would not be given a separate account because Networld was still a tenant in the building, and with concern for the possibility that as purchaser of the Property, he would be obligated for Networld’s liabilities, he contended that “I am not assuming its debt.” He then provided the amended quit-claim deed which again transferred the Property to him. This time, however, the deed purports to convey the Property “but not any liabilities . . . regarding the Property.” This deed was signed in March 2009, *three years* after the litigation

began and almost *ten years* after the 1999 REPC submitted by Mr. Bowman was apparently executed.¹ The 2009 REPC, which Mr. Bowman claims supports the genuineness of the quit-claim and amended quit-claim deeds is blank. There are no signatures, no dates—nothing to indicate it is nothing more than a proposed REPC. The form, timing and coincidence of the quit-claim deed and amended quit claim deed, along with the 2009 REPC, seem too dubious to furnish any reliable evidence of Mr. Bowman’s ownership of the Property. At the very least, it appears that there remain issues regarding ownership of the Property that are still being litigated in civil court. Whatever rights to the Property he feels he has, are properly dealt with in civil court. From the evidence submitted by the Company, the Division, and from Mr. Bowman himself, it appears that Mr. Bowman’s claim that he is the new owner of the Property is merely an attempt to aid Networld in not paying for service it rightfully received.

Mr. Bowman also claims that he has no association with Networld and that he should not have to pay their balance in order to get service in his name. The evidence shows that he is associated with Networld. Though Mr. Bowman claims he had a “huge falling out” with his brother and that he was removed from representing Networld “in any capacity”, his brother, the Networld president, added Mr. Bowman as an authorized account contact for Networld, just a little over three months ago. Despite Mr. Bowman’s contention that he has no relation with Networld, he paid \$7,500 towards Networld’s arrearages. Before rescinding on his agreement to pay the remainder of the balance, Mr. Bowman agreed to pay the balance of the Networld account in two remaining payments. Additionally, Mr. Bowman initiated two additional credit

¹ Additionally, although lack of recordation itself is not reason to invalidate the deeds as evidence of ownership, the Division and Company do raise valid points in questioning why they were not recorded if valid.

card payments on Networld's account before reversing those payments after filing his complaint. Also, Mr. Bowman, in claiming that he owns the Property, admits that Networld is a tenant in the Property, and will continue to be a tenant, along with Transionics, even after he would assume service. These circumstances also tend to show that Mr. Bowman is associated with Networld and assisting Networld in attempting to avoid payment for services.

From the evidence presented, it appears that Mr. Bowman, Networld, and perhaps even Ken Bowman are simply attempting to avoid payment for utility services provided to them. Allowing Mr. Bowman to receive service in his own name for the Property, without having the Networld account satisfied, would improperly allow Networld to avoid payment for services rendered, and correctly billed by the Company. The Commission does not find any basis to order the Company to reimburse the payment on the Networld account, or to accept Mr. Bowman's application for service on the Property without first receiving full payment for the amounts owing on the Networld account, either from Mr. Bowman himself or from another party.

ORDER

Therefore, the Commission orders as follows:

1. Mr. Bowman's complaint is dismissed with prejudice;
2. the Company is free to pursue all collection options allowed by the law;
3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing within 30 days after issuance of this Order by filing a written request with the Commission. Responses to a request for

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agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirement of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 10th day of June, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 10th day of June, 2009 as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#62289